IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7889 OF 2004

Smt.Smita Ajay Ralegaonkar Petitioner

versus

Bank of India and another Respondent

Mr.M.S.Karnik, adv. for petitioner.

R.S.Pai with Sonali Kulkarni i/by Haresh Mehta & Co; adv. for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 18th October 2004

PC :

1. By this petition petitioner challenges orders dated 16th February 2004 and 19th June 2004 refusing to consider her application for appointment on compassionate grounds.

2. Husband of petitioner joined service of respondent Bank at Deolali Camp Branch, District Nashik on 1st January 1979. It appears that during the course of his service, a charge sheet was served for certain act of misconduct on him. Departmental proceedings were initiated pursuant to this charge sheet. On 24th April 2001 petitioner's husband was awarded punishment of

Censure and reduction to lower stage in the scale of pay permanently. Husband of petitioner preferred an appeal against this order but the same was also dismissed. In other words, this punishment was confirmed.

3. On 10th March 2003 petitioner's husband expired after suffering prolonged illness. It is not in dispute that he died while he was serving and in employment of respondent.

4. An application dated 30th March 2003 was made by petitioner to Zonal Manager, Pune Zone of respondent. By this application she requested that she should be considered for compassionate employment, as she has two school going children. It was also pointed out that having lost her father she has to manage family affairs alone. She, therefore, prayed that she be appointed on compassionate grounds at respondents' Branch at Nashik. By an order dated 16th February 2004, following has been communicated to her :-

> "Madam,
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> We refer to your application on the captioned matter. We are informed by our Pune Zonal Office vide their IOM No.PCO/PER/AKB/1562 dtd.10.2.04, that our Head Office vide their IOM No.P/A/ SSG/2709 dated 29.1.04 have informed them that your request for appointment

> in the Bank was examined in all respects and the same would not be considered favourably in view of the punishment awarded to late Ajay Vasant Ralegaonkar for his misconduct during his tenure in the Bank."

5. Petitioner once again made a representation/appeal vide her letter dated 22nd March 2004. She pointed out that the terminal benefits received have been adjusted towards payment of housing loan and other dues. She pointed out that there is nothing due and payable to the bank on account of her deceased husband. She once again reiterated her request on account of children's education. She pointed out that one of her daughters is in 12th standard. She pointed out that she has no other source of livelihood or employment. She pointed out that bank has been kind enough to settle medical bills during the course of illness of her deceased husband. She has also pointed out that he did not draw any pension. Therefore, there being no source of income, she prayed that her request be considered once again.

6. By communication/letter dated 19th June 2004, petitioner was informed by respondents that matter has been re-examined in all respects but in view of punishment awarded to her deceased husband for misconduct during his term in the bank, her

request could not be considered favourably. She was informed that no further representations would be entertained on this aspect.

7. Aggrieved by these orders, she has filed the instant petition under Article 226 of Constitution of India.

8. We have heard Mr.Karnik, learned counsel for petitioner and R.S.Pai, learned counsel for respondents.

9. Mr.Pai submits that scheme for recruitment of dependents of employees who die in harness, has been framed by respondents. Mr.Pai submits that this scheme postulates vide clause 10(iv) that whenever deceased employee has been awarded minor penalty or disciplinary proceedings against him are pending or contemplated at the time of death and such proceedings would prima facie have resulted in awarding of minor penalty, appointment on compassionate grounds of dependents will be considered with the approval of bank’s board. On the other hand, in cases of major penalty or disciplinary proceedings prima facie resulting in major penalty being awarded to the deceased, then request of dependents would be considered with the approval of Government of India, Ministry of

Finance, Department of Economic Affairs (Banking Division). He submits that in the light of this scheme, it was decided not to consider request of petitioner. He submits that decision of respondents is in accordance with the scheme. He submits that there is no right muchless vested right in cases of compassionate employment. He submits that within the frame work of the scheme, if it is possible to consider request of dependents for compassionate employment favourably, then appointment can be made. Once case is not covered by the scheme, then the request can be rightly refused. He, therefore, submits that there is no substance in this petition and it be dismissed.

10. Mr.Karnik on the other hand submits that the scheme contemplates offering appointments on compassionate ground to dependents of employees who have died in harness, provided the bank is satisfied that the financial condition of the family is such that it will not be able to meet the crisis due to death of employee. He submits that there is no dispute that the deceased died during the course of his employment on account of serious illness. He submits that respondent was aware of the seriousness of the ailment and prolonged treatment administered to the deceased.

In fact, medical bills have been settled by respondents. He submits that considering the object of the scheme and the peculiar facts and circumstances of present case, respondents ought to have appointed petitioner on compassionate ground. He invites our attention to clause 10 of the scheme and more particularly clauses (i) and (iv) thereof which read as under :-

> "i) The Chairman & Managing Director or the Executive Director or the General Manager (H.R.) may make any deviation/relaxation in the criteria/ norms etc. laid down in the Scheme on merits and circumstances of each case.
>
> ii) ... ...
> iii) ... ...
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> iv) In case where the deceased employee had been awarded minor penalty or disciplinary proceedings against the employee was pending or contemplated at the time of death of the employee, which would prima-facie have resulted in award of minor penalty, appointment on compassionate grounds of the dependents will be considered with the approval of the Bank's Board. In case where the deceased employee had been awarded major penalty or disciplinary proceedings against the employee was pending or contemplated at the time of death of the employee, which would prima-facie have resulted in award of major penalty, appointment on compassionate grounds of the dependents will be considered with the approval of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division).

He also invites our attention to revised

Government Guide-lines delegating authority to Bank in cases of appointment on compassionate ground of dependents of deceased employees against whom penalties have been awarded while they were in service.

11. According to Mr.Karnik, powers have been delegated under the revised guide-lines by the Board to the Executive Director and he can consider cases provided major penalty is not awarded/considered/contemplated to employees on account of fraud/forgery/mis-appropriation or on account of any vigilance angle/negligence. He submits that save and except such cases, the Executive Director can appoint dependents of deceased employees on compassionate ground. Therefore, orders rejecting the request of petitioner are unsustainable and deserve to be set aside.

12. We find much substance in the contentions of Mr.Karnik. With the assistance of learned counsel appearing for parties, we have perused the scheme as well as impugned communications. We are of the view that respondents have not considered application made by petitioner in accordance with relevant clauses of the scheme. There is no absolute bar or prohibition in considering cases

of dependents for compassionate employment when the deceased employee has been awarded penalties or punishments. The scheme to which our attention has been invited makes a distinction and empowers Bank's Board in cases of minor penalties whereas cases of major penalties have to be considered with the approval of Government of India. Further communication dated 19th February 2002 from Government of India and Resolution of respondents in pursuance thereof make this aspect further clear. If the impugned communications are considered in the light of these clauses and the object of scheme, in our view, the request of petitioner could not have been turned down merely because her husband was awarded punishment for misconduct during his term with the bank. Clause 10 of the scheme and more particularly sub clause (i) makes it abundantly clear that the Chairman and the Managing Director or the Executive Director or General manager (H.R.) may make any deviation/relaxation in the criteria/norms etc. laid down in the scheme. This of course on merits and circumstances of each case.

13. In our view, once the scheme itself makes such provisions, then the orders impugned in this petition cannot be sustained. Respondent and authorities like them are obliged to act in

accordance with the constitutional mandate and more particularly that enshrined in Articles 14, 16 and 21 as also directive principles of State Policy when such cases are placed for their consideration. A decision in peculiar facts and circumstances could always be reached consistent with object and purpose of such welfare schemes. Therefore, the orders proceeding on the basis of absolute bar are contrary to the scheme itself, and, deserve to be quashed and set aside.

14. In the result, impugned communications dated 16th February 2004 and 19th June 2004 are quashed and set aside. Applications/ representations made by the petitioner on 30th March 2003 and 22nd march 2004 are directed to be reconsidered in the light of observations made hereinabove and the scheme framed by respondents for compassionate employment. Respondents to reconsider them and pass appropriate orders in accordance with law within a period of three months from today. Petition disposed of. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)